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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/571,290

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Rasmus Villefrance

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11/10/2009

SQUIRE, SANDERS & DEMPSEY L.L.P.

8000 TOWERS CRESCENT DRIVE

14TH FLOOR

VIENNA, VA 22182-6212

EXAMINER

PHUNG, LUAT

ART UNIT

PAPER NUMBER

2464

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/571,290	<b>Applicant(s)</b> VILLEFRANCE, RASMUS	
	<b>Examiner</b> LUAT PHUNG	<b>Art Unit</b> 2464	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 24-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 24-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 1 and 24-25 are amended. Claims 62-63 are canceled. No claims are added. Claims 1 and 24-61 are pending.

#### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1 September 2009 has been entered.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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5. Claims 1, 24-27, 29, 30, 43, 44, 57 and 58 are rejected under U.S.C. 103(a) as being unpatentable over Lawande et al (US 6,219,697) in view of Connery et al (US Patent 5,937,169, i.e. WO 99/22306, prior art reference provided in Information Disclosure Statement by Applicant)

Regarding **claims 1, 26 and 27**, Lawande discloses a system for providing data communication between modules connected through a port connector, a method, and a computer program embodied on computer-readable storage medium and comprising code configured to perform a process when the program is run in a processor (Fig. 2, routing device 34; Fig. 3, system memory 50; col. 1, lines 21-25; network connecting different modules), the system comprising:

a port connector; (Fig. 3, network interface 54; col. 9, lines 54+) and  
a plurality of modules configured to communicate data between each other through the port connector (col. 1, lines 21-25; network connecting different modules), wherein said modules are configured to communicate a data package (Fig. 7C; col. 17, line 7; routing of packet) in a layered structure (col. 1, lines 28-45; layering) a physical layer comprising a first and a second segment to encapsulate other layers in said data package (Fig. 5, 1394 Physical Layer 40, protocols TCP, UDP, IP, 1394 Link Layer in other layers; col. 1, lines 47+; col. 11, line 56 to col. 12, line 28; OSI model having lower layer encapsulating upper layers; IEEE 1394 physical layer including parameters, i.e., first and second segments, and encapsulated upper layers), a data link layer comprising a first header field for data payload type and a second header field for a data link layer version (Fig. 5, 1394 Link Layer 40; Fig. 7C, protocol\_type and pn\_version

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corresponding to data payload type and data link layer version, respectively; col. 1, lines 46+; col. 5, lines 41, 42; IP packet encapsulated in IEEE 1394 packet, i.e., data link layer), and a network/transport layer comprising a third header field for a transmitting module's address, a fourth header field for a length of said data package (Fig. 7C, source\_ID, ip\_total\_length; Fig. 7D, source\_ID, total\_length; col. 1, lines 46+), and comprising data payload. (Fig. 7C, ip\_data).

Lawande discloses all of the subject matter except *a fifth header field for an offset value for determination of data payload start in said data package*. However using a field in a message to determine the start of payload is well known in the art. For example, it is well known in the computer communication art that the ASCII character set, the first and foremost specification for encoding of information for communication, defines control codes Start of Header (SOH) and Start of Text (STX), the latter is an indication in the data stream to determine the start of the data, i.e., payload. (See <http://www.p-dd.com/chapter4-page18.html> for description of ASCII's SOH and STX). Furthermore Connery et al from an analogous art discloses a Data Offset field which indicates where the data payload begins (Fig. 4, element 112; col. 12, lines 18+). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to include the data offset field as taught by Connery in the header of packet in the system of Lawande in order to quickly identify the start of the payload and thus effectively perform packet processing.

Regarding **claim 24**, Lawande discloses an apparatus (Fig. 2, routing device 34; Fig. 3), comprising:

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at least one memory including computer program code, (Fig. 3, system memory 50)

at least one processor, (Fig. 3, power PC 44)

wherein the at least one memory and the computer program code are configured to, with the at least one processor, cause the apparatus at least to

receive a data package configured to be communicated between modules connected through a port connection, (Fig. 3, network interface 54; col. 9, lines 54+; network interface 54 communicating with power PC 44 when a packet is received)

wherein said data package comprises the limitations recited in claim 1, and claim 24 is thus further rejected under the same reason set forth in the rejection of claim 1.

Regarding **claim 25**, Lawande discloses an apparatus (Fig. 3, routing device 34), comprising:

at least one memory including computer program code, (Fig. 3, system memory 50)

at least one processor, (Fig. 3, power PC 44)

wherein the at least one memory and the computer program code are configured to, with the at least one processor, cause the apparatus at least to

transmit a data package configured to be communicated between modules connected through a port connection, (Fig. 3, network interface 54; col. 9, lines 54+; network interface 54 communicating with power PC 44 when a packet is sent, i.e., transmitted)

wherein said data package comprises the limitations recited in claim 1, and claim 25 is thus further rejected under the same reason set forth in the rejection of claim 1.

Regarding **claims 29, 43 and 57**, Lawande further discloses wherein said data package further comprises in said network/transport layer a sixth header field prior to said data payload start in said data package for buffering. (Fig. 7C, ip\_options)

Regarding **claims 30, 44 and 58**, Lawande further discloses wherein said data package further comprises a checksum field following the data payload. (Fig. 7C, data\_CRC, ip\_data)

6. Claims 28, 42 and 56 are rejected under U.S.C. 103(a) as being unpatentable over Lawande et al in view of Shuen (US 5,572,528).

Regarding **claims 28, 42 and 56**, Lawande discloses all of the subject matter as recited previously in this office action except *wherein the data link layer version comprises a major version, which is binary incompatible, and a minor version, which is binary compatible*. Shuen from the same or similar fields of endeavor discloses wherein the data link layer version comprises a major version, which is binary incompatible, and a minor version, which is binary compatible (col. 31, lines 1-24). Thus it would have been obvious to the person of ordinary skill in the art at the time of the invention to implement the header containing the major and minor version numbers of Shuen in the message of Lawande in order to identify compatibility of services.

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7. Claims 31-41, 45-55 and 59-63 are rejected under U.S.C. 103(a) as being unpatentable over Lawande et al in view of Chuah (US Pub. 2003/0214928).

Regarding **claims 31, 32, 34-39, 45, 46, 48-53, 59 and 60**, Lawande discloses all of the subject matter except:

*wherein said data package further comprises in said network/transport layer a seventh header field for a data package number, as recited in claims 31, 45 and 59;*

*wherein said data package further comprises in said network/transport layer an eighth header field for a data package fragment sequence number, as recited in claims 32, 46 and 60;*

*wherein said first segment further comprises a synchronization field for synchronizing the receiving module with the transmitting module, as recited in claims 34 and 48;*

*wherein said second segment of the physical layer comprises an index byte for providing the receiving module with information regarding segmentation or partitioning of data contained in a message, as recited in claims 35 and 49;*

*wherein said second segment further comprises a sequence and acknowledge field for providing a receiving module with information whether said data package is an acknowledgement message or an ordinary message, as recited in claims 36 and 50;*

*wherein said second segment further comprises a sequence and acknowledge field is adapted to inform whether an error was identified in the received data package, when said data package is an acknowledgement message, as recited in claims 37 and 51;*



*wherein said sequence and acknowledgement field is further adapted to inform a receiving module that a sequence number in said receiving module should be reset, as recited in claims 38 and 52; and*

*wherein said sequence and acknowledgement field is adapted to recognise acknowledgement messages and detect missing data packages, as recited in claims 39 and 53.*

However Lawande discloses the use of protocols such as TCP, UDP over the IP, link and physical layers (Fig. 5). It is well known to one of ordinary skill in the art at the time of the invention that these layers of the protocol stack comprise the sequence number, i.e., data package number of claims 31, 45 and 59, fragment number, i.e., fragment sequence number of claims 32, 46 and 60, and hand-shake protocol including acknowledgement or other message of claims 36 and 50, and information about segmentation, synchronization and error detection and correction of claims 35, 37-39, 49 and 51-53. Specifically Chuah from the same or similar field of endeavor discloses a MAC header containing fields such as sequence control comprising sequence number and fragment number, frame control, reservation acks, acks for data, etc. (Fig. 6, 7 and 8; para. 97-117). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to construct a message of Lawande to include these additional fields of Chuah in headers of data packets to ensure full and accurate transmission in the ubiquitous IP network.

Regarding **claims 33, 47 and 61**, Lawande discloses all of the subject matter except *wherein said first segment of said physical layer comprises a media field for*

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*defining media across which the data package is transferred.* Chuah from the same or similar field of endeavor discloses a header containing type and subtype fields describing the type of control and payload data. (Fig. 6F; para. 103). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to construct a message of Lawande to include the payload type field of Chuah to optimize routing of data packets.

Regarding **claims 40 and 54**, Lawande further discloses wherein said second segment further comprises a fill field for ensuring that all data packages sent over said port connector contain an even amount of bytes. (Fig. 7C, padding; col. 18, lines 3-7)

Regarding **claims 41 and 55**, Lawande discloses all of the subject matter except *wherein said second segment further comprises a parity field for storing parity calculated on the basis of the data package excluding the parity field.* Chuah from the same or similar field of endeavor discloses wherein said second segment further comprises a parity field for storing parity calculated on the basis of the data package excluding the parity field. (Fig. 6A, FCS; para. 97). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to construct a message of Lawande to include the FCS field of Chuah to optimize routing of data packets.

### ***Response to Amendment***

8. Applicant's arguments filed on 1 September 2009 have been fully considered but they are not deemed to be persuasive.

9. On page 2, Applicant argues that:

With respect to the Advisory Action's argument beginning at page 3 of the continuation sheet, it is respectfully noted that Applicant has not argued limitations that are not presented in the claims. Instead, Applicant respectfully insists that the claims must be read in light of the specification. The Advisory Action did not respond to that argument, and the Office Action did not read the claims in light of the specification. Thus, the rejection is in error and must be withdrawn.

**Examiner's response:**

If Applicant argues that the claimed fields belong to headers of IP or OBEX type packets, Examiner does not see such a limitation in the claims. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., IP or OBX type packets) are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant did not respond to Examiner's response that limitations from the specification are not read into the claims, and merely repeated the argument, which does not meaningfully advance prosecution.

10. Applicant further argues that:

Likewise, with respect to the Advisory Action's argument beginning at page 4 of the continuation sheet, it is respectfully noted that Applicant has not argued limitations that are not presented in the claims. Instead, Applicant respectfully insists that the

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definition of "header section" provided in the specification must be acknowledged and used to interpret the claims. The Advisory Action did not respond to that argument, and the Office Action did not properly consider the definition of "header section" as provided in the specification. Thus, the rejection is in error and must be withdrawn.

**Examiner's response:**

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the "data payload type" field is located in the data segment) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Instead the claim recites "... a data link layer comprising a first header field for data payload type", i.e., data payload type field is located in the data link layer, and not in some data segment. As a recap of the rejection of claim 1, Lawande discloses ... a data link layer comprising a first header field for data payload type and a second header field for a data link layer version (Fig. 5, 1394 Link Layer 40; Fig. 7C, protocol\_type and pn\_version corresponding to data payload type and data link layer version, respectively; col. 1, lines 46+; col. 5, lines 41, 42; IP packet encapsulated in IEEE 1394 packet, i.e., data link layer).

In particular the claim recites a data link layer comprising the data payload type, constituting the IEEE 1394 link layer comprising the protocol type in Lawande ("One example of a physical and link layer medium is the IEEE 1394 high speed serial bus"

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(col. 2, lines 1, 2), i.e., IEEE 1394 corresponds at least to the data link layer; the "protocoltype" field is put in the IEEE 1394 packet header (col. 17, lines 15-21), and the "protocol\_type field may be modified based on the configuration of the system to indicate the type of packet encapsulated in the field" (col. 17, lines 38-40), i.e., protocol type field, which indicates type of encapsulated packet, corresponds to the data payload type; thus the protocol type field in IEEE 1394 header reading on the claimed limitation of data link layer comprising a first header field for data payload type)

11. Applicant further argues that:

The Advisory Action, at page 5, simply insisted that "the rejection, when reiterated in the response, clearly explains the mapping between the prior art and the claims." However, Applicant respectfully notes that simply reiterating one's statements does not meaningfully advance prosecution. Like the Office Action's statement that was a conclusory assertion that the mapping in the claims is proper, this further conclusion does not explain why the Examiner was not persuaded by the distinctions set forth in the Response of July 22, 2009. If no answers to the distinctions identified in the Response of July 22, 2009, can be provided, then the claims should be allowed. If the distinctions can be answered, Applicant has a right to be told what those answers are so that appropriate modification of the claims or clarification of the record can be made, and the invention for which a patent is sought can be expediently allowed to issue.

**Examiner's response:**

Please refer to response above. It is noted that the rejection, when reiterated in the response, clearly explains the mapping between the prior art and the claims, and is not merely conclusory assertion as argued by Applicant.

12. Applicant further argues that:

At page 6, the Advisory Action used essentially the same argument as at page 4 of the Advisory Action. However, contrary to the Advisory Action's contentions, Applicant is not asking for limitations to be read into the claims from the specification, but instead Applicant is insisting that U.S. law requires that the claims be read in light of the specification. In light of the specification, the implicit construction of the claims provided in the Office Action is incorrect and the rejection must be withdrawn.

**Examiner's response:**

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., data segment encapsulated in between the two segments of the physical layer shown in the drawings of the disclosure) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

13. Applicant further argues that:

At pages 7-8, the Advisory Action again used essentially the same argument as at pages 4 and 6. Contrary to the Advisory Action's contentions, however, Applicant did not request limitations from the specification to be added to the claims. Instead, Applicant pointed out (1) that there is no motivation to modify Lawande so as to arrive at the claims and (2) that advantages exist that demonstrate the non-obvious nature of Applicant's invention. The Advisory fails to answer either of these arguments. If no answers can be given, the right thing is for the claims to be allowed and the application to be passed to issuance.

**Examiner's response:**

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., compatibility and different protocols simultaneously) are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Examiner notes that TSM are not specifically required as noted in KSR. In fact KSR forecloses such an argument. Beside, Examiner did show Lawande's teaching of the data link layer comprising the data payload type, as claimed.

Applicant merely repeats the argument which has been responded to by Examiner. In particular the teaching by Lawande of specific claimed limitations is as recited in the rejection of claim 1.

14. Applicant further argues that:

At pages 8-9, the Advisory Action first simply cuts and pastes a portion of the original rejection and then adds that "The claimed physical layer corresponds to the IEEE 1394 physical layer of Lawande .... " Thus, it appears that the Advisory Action is no longer continuing the argument in the Office Action regarding "An alternate interpretation .... " As such, no further response is necessary, since the original rejection has already been addressed.

**Examiner's response:**

As a recap of the rejection of claim 1, Lawande discloses ... a physical layer comprising a first and a second segment to encapsulate other layers in said data package (Fig. 5, 1394 Physical Layer 40, protocols TCP, UDP, IP, 1394 Link Layer in other layers; col. 1, lines 47+; col. 11, line 56 to col. 12, line 28; OSI model having lower layer encapsulating upper layers; IEEE 1394 physical layer including parameters, i.e., first and second segments, and encapsulated upper layers).

The examiner notes the broadest reasonable interpretation in light of Applicant's specification. The claimed physical layer corresponds to the IEEE 1394 physical layer of Lawande, and as it is well known to one of ordinary skill in the art, IEEE 1394 specification provides for parameters, i.e., first and second segments, necessary for transmission of encapsulated data from upper layers.

15. Applicant further argues that:



At page 14, the Advisory Action essentially cuts and pastes a portion of the rejection found at page 4 of the Office Action (and reproduced at pages 15-16 of the Office Action). This is followed, at page 15 of the Advisory Action, by a paragraph that essentially cuts and pastes the second paragraph found at page 16 of the Office Action. Those arguments were already fully addressed in the Response filed July 22, 2009, and the reproduction of those arguments, without responding the distinctions already identified in the Response filed July 22, 2009, does not meaningfully advance prosecution. If no responses to Applicant's arguments can be provided, the appropriate course of action is to withdraw the rejection and allow the claims of the application.

**Examiner's response:**

As a recap of the rejection of claim 1, it is noted that using a field in a message to determine the start of payload is well known in the art. For example, it is well known in the computer communication art that the ASCII character set, the first and foremost specification for encoding of information for communication, defines control codes Start of Header (SOH) and Start of Text (STX), the latter is an indication in the data stream to determine the start of the data, i.e., payload. (See <http://www.p-dd.com/chapter4-page18.html> for description of ASCII's SOH and STX).

It would have been obvious to one of ordinary skill in the art to include an offset value to determine data payload start as suggested by old ASCII technique as it is common sense to identify the start of data for efficient packet processing.

16. Additionally, at pages 15-16, the Advisory Action quotes material from the MPEP on the rationales that are allegedly permitted by the KSR decision. None of those rationales, however, is specifically identified as being used in the rejection. Accordingly, this material appears to be extraneous.

**Examiner's response:**

Use of the KSR decision is further explained in the following section.

17. On pages 4 and 5, Applicant argues that:

Next, at page 16, the Advisory Action reasserts that the feature of "a fifth header field for an offset value for determination of data payload start in said data package" reads on the alleged prior art. For the reasons already provided in the Response of July 22, 2009, this assertion is not correct.

In the next paragraph of page 16, the Advisory Action took the position that although Applicant had pointed out that Connery's offset field is in the TCP header, "the claimed limitation of the fifth header field is located in the network/transport layer which corresponds to the TCP layer." This argument is essentially irrelevant to Applicant's argument. Applicant had argued that it would not be obvious to modify the ip\_fragment\_offset of Lawande to be like the offset field of Connery, because Connery already has a corresponding "fragment offset" in the IP header, which is a different header than the TCP header. Thus, the proposed modification to Lawande is not obvious.

Finally, the Advisory, at page 17, argued that "the use of a data offset field is used to identify the start of the payload, as is often used in parsing of communications data." This alleged motivation to modify Lawande does not seem to provide a rationale for including such a field in the same header as the other fields in Lawande. In fact, it does not provide any motivation specifically to modify Lawande at all. The Advisory Action (like the Office Action) has not recognized that there is no need for a data offset field in Lawande, and that consequently one of ordinary skill in the art would view such a modification to Lawande to be unnecessary and consequently undesirable. Thus, the cited art does not render the claimed invention obvious.

**Examiner's response:**

As a recap of the rejection of claim 1, Connery et al from an analogous art discloses a Data Offset field which indicates where the data payload begins (Fig. 4, element 112; col. 12, lines 18+). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to include the data offset field as taught by Connery in the header of packet in the system of Lawande in order to quickly identify the start of the payload and thus effectively perform packet processing.

The court in *KSR* states "*When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill in the art has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. Finally, the court drew the wrong conclusion from the risk of courts and patent examiners falling prey to hindsight*

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*bias. Rigid preventative rules that deny recourse to common sense are neither necessary under, nor consistent with, this Court's case law."*

There's a finite number of alternatives to determine the start of payload data, and the use of an offset value is an old technique that is well known in the art. It is thus common sense to include such a field in a packet in order to ascertain the beginning of the payload.

### **Conclusion**

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LUAT PHUNG whose telephone number is (571) 270-3126. The examiner can normally be reached on M-Th 7:30 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Q. Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/L. P./

Examiner, Art Unit 2464

/Ricky Ngo/

Supervisory Patent Examiner, Art Unit 2464